

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

ROBERT POINDEXTER

Plaintiff

Against

EMI RECORD GROUP INC

No. Civ. 559 (LTS)

USDC SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC #: 12/16/11  
DATE FILED: 12/16/11

NOTICE OF MOTION  
TO FILE SUR REPLY

**PLEASE TAKE NOTICE** that, upon the annexed Affirmation of Robert Poindexter [I, me, my], and all of the prior pleadings and proceedings in this action, I will move the Court, before the Honorable Judge Laura Taylor Swain, United States District Judge, Southern District Judge, Southern District of New York, at the United States Courthouse, 500 Pearl Street, Courtroom 10Ak, New York, New York 10007, for an order Pursuant to Federal R. Civ. P. 12(b)(6) Rule, 6.1(b) granting me the right to file a Sur Reply to Defendant's Reply to my opposition to the Motion to Dismiss.

Pursuant to paragraph 2.B of the Individual Practices of Judge Laura Taylor Swain, I have used my best effort to resolve informally the matters raised in the Amended Complaint and Motion papers, including an offer to resolve the matter out of court for a token amount of royalties. Defendant has outright refused to even consider my offer(s) of compromise.

**I declare under penalty of perjury that the forgoing is true and correct.**

Dated: New York, New York  
December 15, 2011

By:   
ROBERT POINDEXTER/PRO SE  
153-27 120<sup>th</sup> Avenue  
Jamaica N.Y. 11434  
(718) 322-7813

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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ROBERT POINDEXTER

Plaintiff

against

EMI RECORD GROUP INC.

Defendant

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No. Civ. 559 (LTS)

**AFFIRMATION IN  
OPPOSITION TO REPLY**

**I, ROBERT POINDEXTER, affirm under penalty of perjury that:**

1. I, Robert Poindexter [I, my, me] am the Pro Se Plaintiff in the above entitled action, and respectfully submit this affirmation in opposition to Defendant's reply to my opposition to the Motion to Dismiss ( Defendant's Reply), dated December December 8<sup>th</sup>, 2011, made by EMI Record Group Inc, asking that the Court order a Motion to Dismiss my Amended Complaint.

1. The motion should be denied because:

2. Defendant's Reply was largely based on the unfounded statement, on page 1, first paragraph, that "I have a dismissive and ignorant attitude toward well settled legal principals of copyright law." Being that statement says that I am ignorant to the principals of copyright law in general, it has no bearing on the specific issues in this case, and raises a new issue regarding my general intelligence and mental capacity to represent myself in any copright case. Such an issue was not raised in the prior Pleadings in this Matter. It is an apparent personal and prejudice attack that is not supported by any proven evidence whatsoever. The Court acceped my Amended Complaint and did not order Pro Bono representation, nor did Defendant request such. The court acceptance of Defendant's

Reply as is could possibly affect my Pro Se right to represent myself in any future copyright case that I may bring before courts. Therefore, I believe that I am entitled to oppose the new issue herein by a Sur Reply

3. In II A of Argument, page 2 of Defendant's Reply, it is asserted that I alleged that I formally had royalty rights to "Thin Line." To the contrary I clearly asserted that I always had and still have certain exclusive royalty rights to "Thin Line." I believe that I am entitled to defend myself against that false statement, and others, by submitting a Sur Reply.

4. Defendant is blatantly misquoting sections 115(a) and (b)(2) of the Copy Right Act, 17U.S.C. by leaving out all reference to the unlawfully fixing of a copyright musical work in a sound recording, when citing reference cases. 115(a)(1)i exactly states: "**A person may not may not obtain a compulsory license for use of the work in the making of phonorecords duplicating a sound recording fixed by another, unless such sound recording was fixed lawfully.**" All reference to "**NOTICE OF INTENTION TO OBTAIN A COMPULSORY LICENSE**" in (b)(1) and (b) was allso blatantly left out.

5. Defendant did not answer and respond to the assertions of my rights right as a beneficial owner of an exclusive royalty right owner under sections 201(d)(1) and (d)(2) of Copyright Act; nor was there an answer or response to my assertion of section 501(b), or any mention of those relevant laws. I believe that I am entitled to present a legal argument, in a Memorandum of Law in a Sur Reply, regararding Defendant's failure to answer and respond.

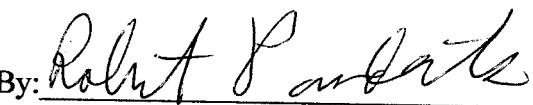
6 . In all the reference cases regarding substantial similar notes, cited by Defendant, there was not one other recording, other than "Washed Away"/"Thin Line" submitted in support of its allegations. Therefore all such references cases were, general and theoretical.

7. Defendant failed to respond to my assertion that Warner is not objecting to my personally filing a law suit on behalf of my exclusive royalty rights in the "Thin Line" composition and sound recording. A diligent search would have, included a simple call or email to Warner to obtain factual evidence one way or another regarding the Buyout Agreement, granting me that right.

8. For the above mentioned reasons and similar others throughout Defendant's Reply, I am requesting the Court to grant me permission to file a Sur Reply, containing a Memorandum of law in support of the Amended Complaint.

**I declare under penalty of perjury that the foregoing is true and correct.**

Dated: New York, New York  
December 15, 2011

By:   
ROBERT POINDEXTER/PRO SE  
153-27 120<sup>th</sup> Avenue  
Jamaica N.Y. 11434  
(718) 322-7813

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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ROBERT POINDEXTER

Plaintiff

No 11 Civ. 559 (LTS)

AFFIRMATION OF SERVICE

-against-

EMI RECORD GROUP INC.

Defendant

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I, Robert Poindexter, declare under penalty of perjury, that by U.S. Postal Express Mail, I have served a copy of the attached Motion to file Sur Reply upon Eric Shimanoff (lawyer for EMI Record Group Inc), whose address is 1133 Avenue of the Americas, New York, N.Y. 10036-6799.

Dated: December 15, 2011

New York N.Y.

Robert Poindexter

ROBERT POINDEXTER/PRO SE  
152-27 120<sup>th</sup> Avenue  
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